

REMARKS

This application pertains to a novel folding box for articles, such as a jar with a screw lid.

Claims 1 and 3-8 are pending, the limitations of canceled claim 2 being incorporated into claim 1.

The drawings stand objected to because the transparent film of claim 6 and the jar with a screw enclosure positioned within the box are not shown.

A proposed additional drawing (Figure 9), which illustrates the box shown in Figure 8, with a jar having a screw cap within the box, and a transparent film covering cutout 131 is enclosed for review and approval by the Examiner. This drawing does not constitute new matter, as it illustrates over that which has already been described on the text of the application as originally filed.

The paragraph beginning at line 15 of page 7 has been amended to refer to the transparent film as being shown in Figure 1.

A brief description of Figure 9 has also been added to page 6, and a further discussion added to page 14.

If the Examiner would be kind enough to indicate his approval of the proposed drawing, a formal corrected drawing will be submitted to the Official Draftsman. At that time, Applicants will also submit corrected copies of Figures 2 – 7 to the Official Draftsman, in which the word "Figur" is corrected to – Figure --.

The Abstract stands objected to because of the inclusions of legal phraseology. A corrected Abstract has now been provided, and the objection should be withdrawn.

The claims stand objected to because of the inclusion of reference characters which are not enclosed within parentheses. This has now been corrected and the objection should accordingly be withdrawn.

Claims 2, 3, 4 and 8 stand rejected under 35 U.S.C. § 112, second paragraph, for various reasons indicated more specifically in the Office Action. Each of the issues raised by this rejection have been carefully considered, and appropriate amendments have been made to overcome them. It is believed that the 35 U.S.C. 112, second paragraph rejection has now been overcome, and it should accordingly be withdrawn.

Claim 1 stands rejected under 35 U.S.C. 102(b) as anticipated by Smith (GB 853,891).

The Examiner will note that the tabs extending from the lid ends of Applicants' right and left side-walls are divided up into five sections by folding lines. As a result of this, the supporting strips (423 and 443) are aligned at essential right angles to the second spacer crosspieces (424 and 444), which provides structural support for the box.

not a 4/4!

These features are neither taught nor suggested by Smith.

The rejection of claim 1 under 35 U.S.C. 102(b) as anticipated by Smith should accordingly now be withdrawn.

Claims 2 and 3 stand rejected under 35 U.S.C. 103(a) as obvious over Smith in view of Stracke. The Examiner proposes to add the top portions of Stracke's second and fourth side walls to Smith, to provide a second top connection point for the article held (by Smith), thereby making for a more secure connection.

The Examiner will note, however, that Stracke's articulated flaps (11) form box-like support structures at the top of Stracke's box, and these are spaced apart by a considerable distance from the bottom of Stracke's box. See Figure 2.

I. covered.

In Smith's box, it is obvious that closure flaps 24 are intended to fold against the flanges of flap 21 and hold them against the side walls. These flaps (24) are clearly designed to extend to the full depth of the box when they are folded over. It is also apparent that that flaps (24) are intended to be folded down before an article is placed in

the box. If an article were placed in the box beforehand, the flanges of insert 21 would interfere with placement of the article into the box, since they would not have been secured against the side wall, and the article would block flaps 24 from being folded down.

If flaps 24 were replaced by Stracke's flaps 11, (a) they would not extend to the bottom of Smith's box and would not secure the flanges of insert flap 21 against the side wall, and (b) could be folded only after the article was inserted into the box – otherwise they would block the top opening such that an article could not be inserted.

Therefore, the substitution of Stracke's flaps 11 for Smith's flaps 24 would destroy Smith's inventive concept. No person reading Smith would ever make this substitution, as the structures of the two boxes are completely different and their uses are completely different. Stracke is clearly intended as a "display" box (note the large front opening), whereas Smith's box is clearly intended to completely enclose an article.

Accordingly, claims 2 and 3 cannot be seen as obvious over Smith in view of Stracke, and the rejection of said claims under 35 U.S.C. 103(a) as obvious over said references should now be withdrawn.

Claim 4 stands rejected under 35 U.S.C. 103(a) as obvious over Smith in view of Lo Duca. The Examiner would modify the box of Smith with the articulated flaps of Lo Duca.

However, Lo Duca's articulated flaps form a hollow support structure in the bottom of Lo Duca's box for a jar (col. 3, lines 11-15; Fig. 4). Smith already has such a support provided by hinged insert flap 21 (Fig. 3), and Smith's support is of a much simpler design than Lo Duca's. Moreover, both Smith and Lo Duca have an "ordinary" top closure flap (Smith's 23, Lo Duca's 14), and neither of these references provide any suggestion of a support structure for the top of their boxes. In addition, any such top support structure would represent a gross departure from Smith's box, and would almost certainly render Smith's box inoperable in its clearly intended use.

The rejection of claim 4 under 35 U.S.C. 103(a) as obvious over Smith in view of Lo Duca should accordingly now be withdrawn.

Claim 5 stands rejected under 35 U.S.C. 103(a) as obvious over Smith in view of Hobbs.

The Examiner cites Hobbs as showing tapering walls.

Tapering walls will not, however, overcome the differences between Applicants' box and that of the Smith reference, as discussed above with respect to the 35 U.S.C. 102(b) rejection of Claim 1 as anticipated by Smith.

Accordingly, claim 5 cannot be seen as obvious over Smith in view of Hobbs, and the rejection of said claim under 35 U.S.C. 103(a) as obvious over said combinations of references should now be withdrawn.

Claim 6 stands rejected under 35 U.S.C. 103(a) as obvious over Smith in view of Stracke and Sparks.

The differences between Applicants' box and the disclosure of the Smith/Stracke combination of references have been discussed above with respect to the rejection of claims 2 and 3. The Examiner would add Sparks to the combination of references for a teaching of a transparent film covering.

A transparent film covering will not in any way overcome the differences between Applicants' box and anything that could be derived from the Smith/Stracke combination of references, as discussed above.

The combination of Smith, Stracke and Sparks cannot therefore render claim 6 obvious, and the rejection of claim 6 under 35 U.S.C. 103(a) as obvious over Smith in view of Stracke and Sparks should therefore be withdrawn.

Claim 7 stands rejected under 35 U.S.C. 103(a) as obvious over Smith. The Examiner views Smith as being capable of containing a jar with a screw enclosure.

The differences between Smith's box and Applicants' have been discussed above with respect to the 35 U.S.C. 102(b) rejection of claim 1. There is absolutely nothing to be found anywhere in the Smith reference that would suggest the changes that would be required to overcome these differences. Certainly the ability of Smith to contain a jar with a screw lid, even if such an ability existed, would not overcome the differences discussed above.

The rejection of claim 7 under 35 U.S.C. 103(a) as obvious over Smith should accordingly now be withdrawn.

Finally, claim 8 stands rejected under 35 U.S.C. 103(a) as obvious over Smith in view of Hamilton. The Examiner would substitute Hamilton's bottom flaps 11 for Smith flaps 24.

However, Hamilton's flaps 11 form a seat in the bottom of Hamilton's box for a jar. Smith already has a seat (21) which is much simpler than Hamilton's. In addition, if Hamilton's flaps 11 were substituted for Smith's flaps 24, the function of Smith's flaps 24 would be lost, thereby departing from Smith's invention, in the same way as the substitution of Stracke's flaps would, as discussed above with respect to the rejection of claims 2 and 3. Furthermore, Hamilton's articulated flaps are taught as bottom flaps, not as top flaps. They are folded over before an article is inserted, not after. If such flaps were used at the top, and there is no suggestion anywhere to so use these, they could not be folded over before an article were inserted, as this would then obstruct the top

opening, and the article could not be inserted. If they were left unfolded until after the article were inserted, the article would block those flaps from being folded over. Thus, there is absolutely no reason why any person skilled in the art would be motivated to even try using such flaps as substitutes for Smith's flaps 24.

Accordingly, the rejection of claim 8 under 35 U.S.C. 103(a) as obvious over Smith in view of Hamilton should now be withdrawn.

In view of the present remarks it is believed that claims 1 and 3-8 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested and the allowance thereof is courteously solicited.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Appellants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.


ADDITIONAL FEE

Please charge any insufficiency of fee or credit any excess to Deposit Account No.

14-1263.

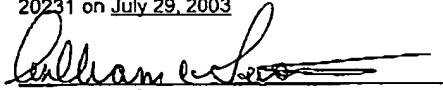
Respectfully submitted,

NORRIS, McLAUGHLIN & MARCUS

  
William C. Gerstenzang  
Reg. No. 27,552

WCG:tmh  
220 East 42<sup>nd</sup> Street - 30<sup>th</sup> Floor  
New York, New York 10017  
(212) 808-0700

I hereby certify that this correspondence is being  
transmitted via facsimile addressed to Hon.  
Commissioner For Patents, Washington, D.C.  
20231 on July 29, 2003

  
William C. Gerstenzang

Date: July 29, 2003